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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMES BLAIS and GAIL BLAIS,
Plaintiffs,
vs.
ROSS HUNTER, in his official
capacity of Secretary of Washington
State Department of Children, Youth
and Families,
Defendant.)
)

) NO. 20-CV-00187-SMJ
) PLAINTIFFS' UNOPPOSED
) MOTION TO AMEND
) SCHEDULING ORDER
)
) Hearing: March 4, 2021
) Time: 6:30 p.m.
) Without Oral Argument
)
)

Plaintiffs James and Gail Blais request that this Court amend its Scheduling Orders [ECF No. 63] to extend several of the pretrial deadlines relating to the completion of discovery and the submission of discovery and dispositive motions.

As grounds for this motion, Plaintiffs state as follows:

1. Plaintiffs filed their original complaint for declaratory and injunctive relief in May 2020. Plaintiffs filed their first amended complaint for preliminary

1 and permanent injunction in July 2020 before Defendant had filed a responsive
 2 pleading. After the Court entered its Order Granting in Part and Denying in Part
 3 Plaintiffs' Motion for Preliminary and Permanent Injunction [ECF No. 56], the
 4 Court granted Plaintiffs leave to file a second amended complaint adding allegations
 5 to support a claim for class certification. [ECF No. 71]. Plaintiffs timely filed their
 6 second amended complaint in December 2020. [ECF No. 72].¹

7 2. The Court entered its initial Scheduling Order on October 21, 2020.
 8 [ECF No. 63]. Since then, the Court has entered several additional orders revising
 9 the Court's pretrial deadlines. These revisions have dealt solely with matters related
 10 to Plaintiffs' possible motion for class certifications. *See* [ECF Nos. 66, 71, 73 &
 11 77]. Each of these orders have been clear that "[a]ll other rules, deadlines, and dates
 12 issued in the Scheduling Order, ECF No. 63, remain in effect."

13 3. Since entry of the Court's initial Scheduling Order, the parties
 14 diligently have been pursuing discovery in this matter.

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 17 1 Contemporaneously with this motion, Plaintiffs filed a notice that they no
 18 longer intend to file a motion for class certification pursuant to Federal Rule of Civil
 19 Procedure 23. [ECF No. 78].
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1 A. Plaintiffs have served Defendants with two sets of interrogatories
2 and requests for production of documents – the first in October 2020 and the second
3 in December 2020.

4 B. Defendant began responding to these written discovery requests
5 in November 2020.

6 C. Since that time, counsel have conferred on numerous occasions
7 concerning the adequacy of Defendant's answers and responses to Plaintiffs'
8 discovery requests. In addition to frequent email exchanges, counsel also have
9 conferred by telephone no less than six times. Each of these discussions has assisted
10 the parties in clarifying the scope of discovery and establishing mutually agreeable
11 timetables for Defendant to continue to investigate his files and supplement his
12 earlier discovery responses.

13 D. To-date, Defendant has made three supplemental discovery
14 responses, and has produced thousands of pages of documents.

15 E. All counsel continue to confer in good faith in order to address
16 outstanding discovery issues without the need for intervention by this Court. As a
17 concrete example: following a telephone consultation among all counsel on
18 January 28, 2021, defense counsel made an earnest assessment of the extent of
19 Defendant's document production, what additional discovery responses are yet to be
20 produced and when these tasks will be completed. Defense counsel has informed

1 Plaintiffs' counsel that Defendant is slightly more than halfway through his
 2 production of electronic discovery and that production should be completed by the
 3 end of March 2021. In the meantime, Defendant intends to continue supplementing
 4 his discovery responses on a rolling basis.

5 4. In addition to Plaintiffs' discovery efforts, Defendant also has served
 6 written discovery requests. Defendant served his first set of written discovery in
 7 December 2020. Plaintiffs timely responded to these discovery requests. Plaintiffs
 8 are continuing to review potentially responsive documents and materials and
 9 anticipate supplementing their earlier production responses in the near future.

10 5. All counsel also have been conferring in good faith about depositions.
 11 Both sides hope to be able to begin deposition discovery in the coming weeks.

12 6. Consistent with Fed. R. Civ. P. 16, the Court's Scheduling Orders
 13 provide that "[t]he dates set forth in this Order may be amended **only** by Order of
 14 the Court and upon a showing of good cause. *See, e.g.*, [ECF Nos. 63 & 66]; *see also*
 15 Fed. R. Civ. P. 16(b)(4) ("A schedule may be modified only for good cause and
 16 with the judge's consent.")

17 7. To satisfy the appropriate legal standard, Plaintiffs must show "good
 18 cause" for why the Scheduling Order should be amended. This Court, in supervising
 19 the pretrial phase of litigation and deciding the preclusive effect of a pretrial order,
 20 has "broad discretion" to consider whether to amend its Scheduling Order. *C.F. ex*

1 *rel. Farnan v. Capistrano Unified School Dist.*, 654 F.3d 975, 984 (9th Cir. 2011).

2 When determining whether a plaintiff has demonstrated good cause, the court
 3 “primarily considers the diligence of the party seeking the amendment.” *Johnson v.*
 4 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992).

5 8. Good cause exists to amend several of the pretrial deadlines set forth in
 6 the Court’s Scheduling Order.

7 A. Plaintiffs and Defendants have been diligent in pursuing
 8 discovery to support their claims and defenses and prepare for trial. They timely
 9 served written discovery requests to secure relevant information. They attentively
 10 have been continuing to investigate and scrutinize their respective client’s records,
 11 and have made – and are continuing to make – timely supplementations of their
 12 earlier discovery responses. *See* Fed. R. Civ. P. 26(e)(1) (“A party who . . . has
 13 responded to an interrogatory, request for production . . . must supplement or correct
 14 its disclosure or response: (A) in a timely manner if the party learns that in some
 15 material respect the disclosure or response is incomplete or incorrect”).

16 B. The parties are continuing to cooperate in order to complete their
 17 responses to all pending written discovery requests. They conscientiously have
 18 collaborated to resolve discovery differences in a manner that is resulting in the
 19 production of significant additional relevant information and documents. And they

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1 have worked to secure this result without resorting to premature discovery motions
 2 that would require this Court's involvement.

3 9. In order to permit the parties and their counsel to continue working
 4 together to complete discovery, Plaintiffs request that the Court extend the following
 5 pretrial deadlines:

6 EVENT	7 EXISTING DEADLINE	8 PROPOSED 9 DEADLINE
10 All interrogatories, 11 requests for production, 12 and requests for 13 admission, served	14 December 21, 2020 15 70 days before Discovery 16 Cutoff	17 February 4, 2021 18 70 days before Discovery 19 Cutoff
20 Motions for protective 21 orders filed	22 January 20, 2021 23 40 days before Discovery 24 Cutoff	25 March 5, 2021 26 40 days before Discovery 27 Cutoff
28 Motions to compel 29 discovery filed	30 January 29, 2021 31 30 days before Discovery 32 Cutoff	33 March 16, 2021 34 30 days before Discovery 35 Cutoff
36 Discovery Cutoff	37 March 1, 2021	38 April 15, 2021
39 Notice of to-be- 40 adjudicated claims & 41 affirmative defenses filed	42 March 8, 2021 43 1 week after Discovery 44 Cutoff	45 April 22, 2021 46 1 week after Discovery 47 Cutoff
48 All dispositive, <i>Daubert</i> , 49 and state certification 50 motions filed	51 April 1, 2021	52 May 1, 2021

18 9. All other deadlines and dates set forth in the Court's Scheduling Order
 19 [ECF No. 63], including the trial date, remain in effect, except to the extent they may
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1 be modified in the future by order of the Court upon motion by the parties for good
2 cause or the Court's own initiative.

3 10. Defendant will not be unfairly prejudiced by extending these deadlines.

4 11. For good cause shown, Plaintiffs request that this Court amend
5 paragraph 5(A) of the Scheduling Order [ECF No. 63] to read as follows:

6 All discovery, including depositions and perpetuation depositions, shall
7 be completed by **April 15, 2021** ("Discovery Cutoff").

8 The calculation of all remaining dates premised on the Discovery Cutoff shall
9 change accordingly.

10 12. Plaintiffs further request that the Court amend paragraph 7(A) of
11 the Scheduling Order [ECF No. 63] to read as follows:

12 All dispositive and *Daubert* motions shall be **FILED AND SERVED**
13 on or before **May 1, 2021**.

14 As required by LCivR 7(b)(2) Plaintiffs' counsel conferred in good faith with
15 opposing counsel, who does not oppose this motion.

16 15. RESPECTFULLY SUBMITTED this 2nd day of February, 2021.

17 16. s/ Jerome R. Aiken
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s/ Todd R. McFarland

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Plaintiffs' Unopposed Motion to Amend Scheduling Order - 8

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CERTIFICATE OF TRANSMITTAL

I hereby certify under penalty of perjury of the laws of the state of Washington that on February 2, 2021, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System which will automatically provide service on the below listed parties:

<p>For Plaintiffs James and Gail Blais:</p> <p>Mr. Todd R. McFarland, Associate General Counsel General Conference of Seventh-Day Adventists 12501 Old Columbia Pike Silver Spring, MD 20904 <u>McFarlandT@adventist.org</u></p>	<p><u>X</u> via CM/ECF</p>
<p>Mr. Andrew G. Schultz Rodey, Dickason, Sloan, Akin & Robb, P.A. P.O. Box 1888 Albuquerque, NM 87103 <u>aschultz@rodey.com</u></p>	<p><u>X</u> via CM/ECF</p>
<p>For Defendant Ross Hunter:</p> <p>Mr. Jeffrey C. Grant, Assistant Attorney General Ms. Abigail Kahl, Assistant Attorney General Office of the Attorney General 88 Fifth Avenue, Suite 2000 Seattle, WA 98104 <u>Jeffrey.grant@atg.wa.gov / Abigail.Kahl@atg.wa.gov</u></p>	<p><u>X</u> via CM/ECF</p>
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/s Sheryl A. Jones
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